

AMENDED IN SENATE JULY 2, 2003
AMENDED IN SENATE JUNE 16, 2003
AMENDED IN ASSEMBLY MAY 7, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1218

Introduced by Assembly Member Dutra

February 21, 2003

An act to amend ~~Section~~ *Sections 25299.50.1 and 25299.57* of, and to add Article 6.5 (commencing with Section 25299.64) to Chapter 6.75 of Division 20 of, the Health and Safety Code, relating to underground storage tanks, *and making an appropriation therefor.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1218, as amended, Dutra. Underground storage tanks: claims: performance based contracts: *fire safety agency.*

~~Under~~

(1) *Under* the existing Barry Keene Underground Storage Tank Cleanup Trust Fund Act of 1989, owners and operators of petroleum underground storage tanks requires every owner of an underground storage tank to pay a storage fee for each gallon of petroleum placed in the tank. The fees are required to be deposited in the Underground Storage Tank Cleanup Fund. The money in the fund may be expended by the State Water Resources Control Board, upon appropriation by the Legislature, for various purposes, including the payment of claims to aid owners and operators of petroleum underground storage tanks who take corrective action to clean up unauthorized releases from those tanks.

This bill would authorize the board to pay a claim to reimburse the cost of a performance based contract that is approved by the board as being consistent with the requirements of the bill. The bill would require a performance based contract to include specified terms and would require the board to make payments under a performance based contract based upon the reduction of designated constituents of concern to specified concentrations.

The bill would require the board to advertise the bidding for a performance based contract and would require the board to be the receiving address for bids.

(2) The act establishes the Fire Safety Subaccount in the fund and appropriates the moneys in that subaccount for expenditure by the board to pay specified claims filed by a fire safety agency, as defined. The subaccount is repealed on January 1, 2006, and any funds remaining therein are required to be transferred to the fund.

Existing law requires an appropriation to be available for encumbrance for 3 years after the date on which it first becomes available for encumbrance.

The bill would require funds appropriated for expenditure from the subaccount to be eligible for encumbrance until June 30, 2004, thereby making an appropriation, and would require those encumbered funds to be liquidated no later than December 31, 2005.

Vote: majority. Appropriation: ~~no~~ yes. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. *Section 25299.50.1 of the Health and Safety*
- 2 *Code is amended to read:*
- 3 25299.50.1. (a) For purposes of this section, “fire safety
- 4 agency” means a city fire department, county fire department, city
- 5 and county fire department, fire protection district, a joint powers
- 6 authority formed for the purpose of providing fire protection
- 7 services, or any other local agency that normally provides fire
- 8 protection services.
- 9 (b) The Fire Safety Subaccount is hereby created in the
- 10 Underground Storage Tank Cleanup Fund, for expenditure by the
- 11 board to pay a claim described in paragraph (4) of subdivision (b)
- 12 of Section 25299.52 that was filed before January 1, 2000, by a fire
- 13 safety agency. Except as provided in subdivision (d), the board

1 shall pay a claim filed by a fire safety agency only from funds
2 appropriated from the Fire Safety Subaccount.

3 (c) The sum of five million dollars (\$5,000,000) of the moneys
4 in the fund derived from the sources described in paragraphs (1)
5 to (4), inclusive, of subdivision (b) of Section 25299.50 is hereby
6 transferred from the fund to the Fire Safety Subaccount, and
7 appropriated therefrom to the board, for expenditure pursuant to
8 this section for a claim filed by a fire safety agency specified in
9 subdivision (b).

10 (d) The unpaid amount of ~~any~~ a claim filed by a fire safety
11 agency specified in subdivision (b), for which a closure letter has
12 not been issued pursuant to subdivision (g) of Section 25296.10 on
13 or before January 1, 2006, ~~shall not be payable from~~ may not be
14 paid from funds in the Fire Safety Subaccount, but shall revert to
15 the priority ranking for claims specified in Section 25299.52.

16 (e) The payment of claims pursuant to this section ~~shall~~ may not
17 affect the board's payment of claims filed pursuant to paragraph
18 (1), (2), or (3) of subdivision (b) of Section 25299.52.

19 (f) Any funds remaining in the Fire Safety Subaccount on
20 January 1, 2006, shall be transferred to the fund.

21 (g) *Notwithstanding Section 16304 of the Government Code,*
22 *any funds appropriated for expenditure pursuant to this section*
23 *shall be eligible for encumbrance until June 30, 2004.*
24 *Notwithstanding Section 16304.1 of the Government Code, those*
25 *encumbered funds shall be liquidated on or before December 31,*
26 *2005.*

27 (h) This section shall remain in effect only until January 1,
28 2006, and as of that date is repealed, unless a later enacted statute,
29 that is enacted before January 1, 2006, deletes or extends that date.

30 SEC. 2. Section 25299.57 of the Health and Safety Code is
31 amended to read:

32 25299.57. (a) If the board makes the determination specified
33 in subdivision (d), the board may only pay for the costs of a
34 corrective action that exceeds the level of financial responsibility
35 required to be obtained pursuant to Section 25299.32, but not more
36 than one million five hundred thousand dollars (\$1,500,000) for
37 each occurrence. In the case of an owner or operator who, as of
38 January 1, 1988, was required to perform corrective action, who
39 initiated that corrective action in accordance with Division 7
40 (commencing with Section 13000) of the Water Code or Chapter

1 6.7 (commencing with Section 25280), and who is undertaking the
2 corrective action in compliance with waste discharge
3 requirements or other orders issued pursuant to Division 7
4 (commencing with Section 13000) of the Water Code or Chapter
5 6.7 (commencing with Section 25280), the owner or operator may
6 apply to the board for satisfaction of a claim filed pursuant to this
7 article. The board shall notify claimants applying for satisfaction
8 of claims from the fund of eligibility for reimbursement in a
9 prompt and timely manner and that a letter of credit or
10 commitment that will obligate funds for reimbursement shall
11 follow the notice of eligibility as soon thereafter as possible.

12 (b) (1) For claims eligible for reimbursement pursuant to
13 subdivision (c) of Section 25299.55, the claimant shall submit the
14 actual cost of corrective action to the board, which shall either
15 approve or disapprove the costs incurred as reasonable and
16 necessary. At least 15 days before the board proposes to
17 disapprove the reimbursement of corrective action costs that have
18 been incurred on the grounds that the costs were unreasonable or
19 unnecessary, the board shall issue a notice advising the claimant
20 and the lead agency of the proposed disallowance, to allow review
21 and comment.

22 (2) The board shall not reject any actual costs of corrective
23 action in a claim solely on the basis that the invoices submitted fail
24 to sufficiently detail the actual costs incurred, if all of the
25 following apply:

26 (A) Auxiliary documentation is provided that documents to the
27 board's satisfaction that the invoice is for necessary corrective
28 action work.

29 (B) The costs of corrective action work in the claim are
30 reasonably commensurate with similar corrective action work
31 performed during the same time period covered by the invoice for
32 which reimbursement is sought.

33 (C) The invoices include a brief description of the work
34 performed, the date that the work was performed, the vendor, and
35 the amount.

36 (c) (1) For claims eligible for prepayment pursuant to
37 subdivision (c) of Section 25299.55, the claimant shall submit the
38 estimated cost of the corrective action to the board, which shall
39 approve or disapprove the reasonableness of the cost estimate.



1 (2) If the claim is for reimbursement of costs incurred pursuant
2 to a performance-based contract, Article 6.5 (commencing with
3 Section 25299.64) shall apply to that claim.

4 (d) Except as provided in subdivision (j), a claim specified in
5 subdivision (a) may be paid if the board makes all of the following
6 findings:

7 (1) There has been an unauthorized release of petroleum into
8 the environment from an underground storage tank.

9 (2) The claimant is required to undertake or contract for
10 corrective action pursuant to Section 25296.10, or, as of January
11 1, 1988, the claimant has initiated corrective action in accordance
12 with Division 7 (commencing with Section 13000) of the Water
13 Code.

14 (3) (A) Except as provided in subparagraph (B), the claimant
15 has complied with Section 25299.31 and the permit requirements
16 of Chapter 6.7 (commencing with Section 25280).

17 (B) All claimants who file their claim on or after January 1,
18 1994, and all claimants who filed their claim prior to that date but
19 are not eligible for a waiver of the permit requirement pursuant to
20 board regulations in effect on the date of the filing of the claim, and
21 who did not obtain or apply for any permit required by subdivision
22 (a) of Section 25284 by January 1, 1990, shall be subject to
23 subparagraph (A) regardless of the reason or reasons that the
24 permit was not obtained or applied for. However, on and after
25 January 1, 1994, the board may waive the provisions of
26 subparagraph (A) as a condition for payment from the fund if the
27 board finds all of the following:

28 (i) The claimant was unaware of the permit requirement prior
29 to January 1, 1990, and there was no intent to intentionally avoid
30 the permit requirement or the fees associated with the permit.

31 (ii) Prior to submittal of the application to the fund, the
32 claimant has complied with Section 25299.31 and has obtained
33 and paid for all permits currently required by this paragraph.

34 (iii) Prior to submittal of the application to the fund, the
35 claimant has paid all fees, interest, and penalties imposed pursuant
36 to Article 5 (commencing with Section 25299.40) and Part 26
37 (commencing with Section 50101) of Division 2 of the Revenue
38 and Taxation Code for the underground storage tank that is the
39 subject of the claim.

(C) (i) A claimant exempted pursuant to subparagraph (B) shall obtain a level of financial responsibility twice as great as the amount which the claimant is otherwise required to obtain pursuant to subdivision (a) of Section 25299.32.

(ii) The board may waive the requirements of clause (i) if the claimant can demonstrate that the conditions specified in clauses (i) to (iii), inclusive, of subparagraph (B) were satisfied prior to the causing of any contamination. That demonstration may be made through a certification issued by the permitting agency based on site and tank tests at the time of permit application or in any other manner acceptable to the board.

(D) The board shall rank all claims resubmitted pursuant to subparagraph (B) lower than all claims filed before January 1, 1994, within their respective priority classes specified in subdivision (b) of Section 25299.52.

(4) The board has approved either the costs incurred for the corrective action pursuant to subdivision (b) or the estimated costs for corrective action pursuant to subdivision (c).

(5) The claimant has paid all fees, interest, and penalties imposed pursuant to Article 5 (commencing with Section 29299.40) and Part 26 (commencing with Section 50101) of Division 2 of the Revenue and Taxation Code for the underground storage tank that is the subject of the claim.

(e) The board shall provide the claimant, whose cost estimate has been approved, a letter of credit authorizing payment of the costs from the fund.

(f) The claimant may submit a request for partial payment to cover the costs of corrective action performed in stages, as approved by the board.

(g) (1) Any claimant who submits a claim for payment to the board shall submit multiple bids for prospective costs as prescribed in regulations adopted by the board pursuant to Section 25299.77.

(2) Any claimant who submits a claim to the board for the payment of professional engineering and geologic work shall submit multiple proposals and fee estimates, as required by the regulations adopted by the board pursuant to Section 25299.77. The claimant's selection of the provider of these services is not required to be based on the lowest estimated fee, if the fee estimate

1 conforms with the range of acceptable costs established by the
2 board.

3 (3) Any claimant who submits a claim for payment to the board
4 for remediation construction contracting work shall submit
5 multiple bids, as required in the regulations adopted by the board
6 pursuant to Section 25299.77.

7 (4) Paragraphs (1), (2), and (3) do not apply to a tank owned or
8 operated by a public agency if the prospective costs are for private
9 professional services within the meaning of Chapter 10
10 (commencing with Section 4525) of Division 5 of Title 1 of the
11 Government Code and those services are procured in accordance
12 with the requirements of that chapter.

13 (h) The board shall provide, upon the request of a claimant,
14 assistance to the claimant in the selection of contractors retained
15 by the claimant to conduct reimbursable work related to corrective
16 actions. The board shall develop a summary of expected costs for
17 common remedial actions. This summary of expected costs may
18 be used by claimants as a guide in the selection and supervision of
19 consultants and contractors.

20 (i) The board shall pay, within 60 days from the date of receipt
21 of an invoice of expenditures, all costs specified in the work plan
22 developed pursuant to Section 25296.10, and all costs that are
23 otherwise necessary to comply with an order issued by a local,
24 state, or federal agency.

25 (j) (1) The board shall pay a claim of not more than three
26 thousand dollars (\$3,000) per occurrence for regulatory technical
27 assistance to an owner or operator who is otherwise eligible for
28 reimbursement under this chapter.

29 (2) For the purposes of this subdivision, regulatory technical
30 assistance is limited to assistance from a person, other than the
31 claimant, in the preparation and submission of a claim to the fund.
32 Regulatory technical assistance does not include assistance in
33 connection with proceedings under Section 25296.40,
34 25299.39.2, or 25299.56 or any action in court.

35 (k) (1) Notwithstanding any other provision of this section, the
36 board shall pay a claim for the costs of corrective action to a person
37 who owns property on which is located a release from a petroleum
38 underground storage tank that has been the subject of a completed
39 corrective action and for which additional corrective action is
40 required because of additionally discovered contamination from

1 the previous release, only if the person who carried out the earlier
2 and completed corrective action was eligible for, and applied for,
3 reimbursement pursuant to subdivision (b), and only to the extent
4 that the amount of reimbursement for the earlier corrective action
5 did not exceed the amount of reimbursement authorized by
6 subdivision (a). Reimbursement to a claimant on a reopened site
7 shall occur when funds are available, and reimbursement
8 commitment shall be made ahead of any new letters of
9 commitment to be issued, as of the date of the reopening of the
10 claim, if funding has occurred on the original claim, in which case
11 funding shall occur at the time it would have occurred under the
12 original claim.

13 (2) For purposes of this subdivision, a corrective action is
14 completed when the local agency or regional board with
15 jurisdiction over the site or the board issues a closure letter
16 pursuant to subdivision (g) of Section 25296.10.

17 ~~SEC. 2.—~~

18 *SEC. 3.* Article 6.5 (commencing with Section 25299.64) is
19 added to Chapter 6.75 of Division 20 of the Health and Safety
20 Code, to read:

21
22 Article 6.5. Performance Based Contract
23

24 25299.64. (a) For purposes of this article, the following
25 definitions shall apply:

26 (1) “Baseline concentration” means the initial concentration
27 of a constituent of concern prior to conducting corrective action
28 pursuant to a performance-based contract.

29 (2) “Constituent of concern” means the chemical element,
30 compound, or grouping, including, but not limited to, total
31 petroleum hydrocarbons, as in gasoline, that is present in the soil
32 or groundwater and subject to corrective action.

33 (3) “Performance-based contract” means a written agreement
34 approved by the board between a claimant and an appropriately
35 licensed contractor, where the contractor agrees for a fixed price
36 to take a corrective action to reduce the concentrations of
37 designated constituents of concern to specified concentrations.

38 (4) “Remediation milestone” means that a specified reduction
39 in the concentrations of constituents of concern from baseline
40 concentrations has been attained through corrective action. The

1 reduction is expressed as a percentage of the total reduction
2 required by the performance-based contract.

3 (b) The board may pay a claim pursuant to Section 25299.57
4 to reimburse the cost of a performance-based contract if the board
5 approves the contract as being consistent with this article.

6 (c) A performance-based contract includes, but is not limited
7 to, all of the following elements:

8 (1) The total fixed price contract.

9 (2) The amount.

10 (3) Designated constituents of concern.

11 (4) Baseline concentrations.

12 (5) If appropriate, a payment schedule indicating the amount to
13 be paid when specified remediation milestones are attained.

14 (d) The board shall make payments based upon the reduction
15 in the concentrations of designated constituents of concern to
16 specified concentrations. If corrective action is estimated to take
17 six months or more to achieve these concentrations and the
18 remediation technology proposed is a pump-and-treat or other
19 type of mechanical remediation technology, the board may pay a
20 portion of the fixed price based on the attainment of specified
21 remediation milestones or other performance parameters, in the
22 following manner:

23 (1) The first payment shall include the amount of incurred
24 capital costs upon successful installation and startup of the
25 mechanical remediation system.

26 (2) The second payment shall be an amount equal to the agreed
27 upon percent of the total contract price when the 25 percent
28 remediation milestone is attained.

29 (3) The third payment shall be equal to an agreed upon percent
30 of the total contract price when the 50 percent remediation
31 milestone is attained.

32 (4) The fourth payment shall be equal to an agreed upon percent
33 of the total contract price when the 75 percent remediation
34 milestone is attained.

35 (5) The fifth payment shall be equal to an agreed upon percent
36 of the total contract price when the 100 percent remediation
37 milestone is attained.

38 (6) The final payment shall be the amount of the remaining
39 contract price that shall to be paid when the 100 percent

1 remediation milestone has been maintained for one year following
2 cessation of all active remediation goal.

3 25299.65. (a) The claimant shall submit multiple bids for a
4 performance-based contract in accordance with paragraph (1) of
5 subdivision (1) of Section 25299.57 and any regulations adopted
6 by the board to implement that section.

7 (b) To assist claimants in soliciting bids for a
8 performance-based contract projects, the board shall advertise bid
9 solicitations for these projects through the board's Web site. The
10 board shall be the receiving address for the bids, and shall offer
11 other assistance, upon request, in accordance with the regulations
12 adopted pursuant to this chapter. The bids shall be sealed prior to
13 submittal to the board. This subdivision does not prevent the board
14 from approving a performance-based contract covering multisite
15 cleanups, if the board determines that economies of scale will
16 assist claimants in soliciting bids or reducing overall costs.

17 (c) The sites for which, the board may consider approving a
18 performance-based contract include, but are not limited to, all of
19 the following:

20 (1) A site that had an unauthorized release reported to the
21 board, the regional board, or local agency five or more years ago
22 and active remediation has not begun.

23 (2) A site where corrective action has been implemented for
24 two or more years pursuant to a corrective action plan that was
25 approved by the board, the regional board, or local agency, but that
26 corrective action has not been effective in reducing the
27 concentrations of the constituents of concern to the satisfaction of
28 that board or agency.

29 (3) A site where corrective action costs are expected to exceed
30 the maximum fund reimbursement amount prior to case closure.

31 (4) A site where the board, the regional board, or local agency
32 has recently determined that an unauthorized release has occurred
33 that has the potential to impact nearby receptors or otherwise cause
34 significant impact to the waters of the state.

35 (5) A site where an unauthorized release of MTBE, as defined
36 in paragraphs (2) of subdivision (a) of Section 25299.97, has
37 occurred and corrective action has not been initiated or
38 satisfactorily conducted, as determined by the board, the regional
39 board, or local agency, or according to any regulations adopted
40 pursuant to Section 25296.30.

1 (6) A site where the board, the regional board, or local agency
2 has determined that corrective action other than ongoing
3 monitoring of groundwater is more likely to reduce the
4 concentrations of constituents of concern sooner and at a lower
5 cost.

6 (d) This article does not preclude a claimant from requesting
7 the board consider approving a performance-based contract to
8 conduct corrective action at the claimant's site.

9 25299.66. This article does not limit or abridge the powers
10 and duties granted to the board, the regional board, or local agency
11 pursuant to any other provision of law.

O

